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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,246

10/19/2006

Marian Daniel Baum

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QUINN LAW GROUP, PLLC
39555 ORCHARD HILL PLACE
SUITE # 520
NOVI, MI 48375

EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

07/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,246	Applicant(s) BAUM ET AL.	
	Examiner Hilary Gutman	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 5, 8-9, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Eichhorst et al. (7,093,884).

Eichhorst et al. disclose the claimed invention including a vehicle having an autobody with a movable roof and at least one movable cover part configured to be moved up by at least one drive element 50, wherein the drive element is arranged on a holding device (panel 42) mounted on the autobody and configured to support at least one control unit 46, a hydraulic pump 50, and connections of control lines (Figure 5). The holding device can be preinstalled outside of the body and inherently checked for function. The cover part is configured to be moved by a single drive element 50.

With regard to claim 14, the holding device includes a first connection flange configured to support the control unit; a second flange configured to hold the hydraulic connections for the control lines; a third flange configured to hold a hydraulic pump; and a lower area flange configured to mount the drive element for the cover part.

Art Unit: 3612

With regard to claim 15, the at least one drive element is a hydraulic cylinder.

3. Claims 1, 3, 4, 7-8, 10-11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Obendiek (2001/0040385).

Obendiek discloses the claimed invention including a convertible vehicle having an auto body with a movable roof and at least one movable cover part that covers a receiving area for the roof situated in the auto body when the at least one movable cover part is in a closed position and the movable roof is in an open position, and which can be moved up by at least one drive element (links) 18, 19, 24, 27, 28, characterized in that the drive element is arranged on a holding device 16 that can be mounted on the auto body, which is also a support for at least one control unit (links) 26, 32, a hydraulic pump 36, 38 and connections of control lines (Figure 5) leading to drive units for roof movement.

With regard to claim 14, the holding device includes a first connection flange configured to support the control unit; a second flange configured to hold the hydraulic connections for the control lines; a third flange configured to hold a hydraulic pump; and a lower area flange configured to mount the drive element for the cover part.

With regard to claim 15, the at least one drive element is a hydraulic cylinder.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3612

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Obendiek '385 as applied above to claims 1 and 8 and in view of Graf (5,645,309).

Obendiek is silent on the specific shape of the holding device 16 and lacks the holding device including a passage opening through which the at least one drive element passes.

Graf teaches a holding device 11 in the form of a bracket including an opening (Figure 1) through which a drive element 24 passes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the holding device of Obendiek to include an opening as taught by Graf through which the drive element passes in order to provide a more stable and structurally sound holding device while minimizing the size constraints of the holding device, allowing for a more compact assembly, and while allowing the drive element to be expanded and extended to a full length.

Art Unit: 3612

Allowable Subject Matter

7. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 5/27/09 have been fully considered but they are not persuasive.

With regard to the applicant's comment that the examiner indicated the drive element 50 to be both the drive element and the hydraulic pump, the examiner confirms that the rejection uses reference element 50 to represent both elements. Applicant goes on to argue that Eichorst et al. fails to disclose a drive element that is arranged on the holding device 42. The examiner disagrees and notes that drive element 50 is in fact arranged on the holding device 42. Accordingly, claims 1 and 8 are anticipated by Eichorst et al. and the rejection is maintained.

With respect to Obendiek, applicant states that the examiner has indicated that the drive element and control unit are both links and that the links cannot be both the drive element and control unit. However, examiner notes a plurality of links are present and some links can represent the drive element while others represent the control unit.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the drive element and control unit of the current invention are not links that are movable interconnected to the roof) are not recited in the rejected claim(s). Although the claims are interpreted in light of

Art Unit: 3612

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 3612

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hilary Gutman/
Primary Examiner, Art Unit 3612